



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TANG CAPITAL PARTNERS, LP.,

Plaintiff,

- against -

BRC Inc.,

Defendant.
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22-CV-3476 (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

This order resolves the discovery issues raised by Plaintiff at Dkt. 49 (to which Defendant responded at Dkt. 50.)

1. Discovery re “Earnout Shares”: These documents should be produced. While motive generally is not directly relevant to whether a contractual provision has been breached, such information may still be helpful to the factfinder. The *UMB* case cited by Defendant is materially distinguishable as it involved subpoenas to non-parties, for documents likely in the party’s possession, many of which were likely to be protected by attorney-client privilege or as attorney work product. Those factors, which rendered discovery disproportionate in the *UMB* case, are not present here. Considering the relatively low number of “hits” (695), the Court finds the requested discovery proportionate to the needs of the case.

2. Search Terms: Defendant represents that further progress has been made in the parties’ negotiations over search terms and that court intervention would be premature. Plaintiff may or may not agree with that proposition. Accordingly, the Court will deny the application regarding search terms without prejudice to renew if an impasse is reached.

The Clerk of Court is respectfully requested to terminate the motion at Dkt. 49

SO ORDERED.

A handwritten signature in black ink, appearing to be 'R. Lehrburger', written over a horizontal line.

ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: January 12, 2023
New York, New York